IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CIVIL REVISION APPLICATION NO.130 OF 2005
WITH
CIVIL APPLICATION NO. 23 OF 2004

Shri. Dilip D. Nimbalkar and anr. ..Petitioners.
Vs.
Shri. Manikrao N. Pawar and anr. ..Respondents.

Mr. A.P. Kulkarni for the Petitioners.
Mr. M.N.Pawar party respondent prepsent.

CORAM : B.H. MARLAPALLE, J.
DATED : 13/9/2005.

P.C.:

1. Heard Mr. Kulkarni, learned counsel for the petitioners who are defendant Nos. 1 and 2 in R.C.S. No.60 of 2003 instituted by the present respondent No.1. The petitioners have filed their written statement and opposed the suit on the point of limitation as well as on merits. An application at Exh.16 came to be filed by the petitioners under Section 7 Rule 11 of the C.P.C. praying for return of the plaint on the ground that there was no cause of action to file the suit and so long as defendant No.3, the father of the plaintiff was alive and therefore, the plaintiff had no locus to file the suit. This application has been rejected by the

learned Joint Civil Judge, J.D. Baramati by his order dated 14.10.2003. There is no dispute that the plaintiff has prayed for a declaration that the sale deed No.642 dated 29.4.1984 is null and void and the said transaction between the defendant No.3 and the defendant Nos. 1 and 2 was by way of loan. In addition, the plaintiff has also prayed for partition of the ancestral property and permanent injunction against the defendant Nos. 1 and 2 from alienating the suit property. The suit property has been described as irrigated land bearing Gut No.183(A) admeasuring 42 R and Gut No.183(B) admeasuring 20R located at Village Pandare in revenue District Pune. As per the plaintiff, the cause of action arosed on 14.3.2001. The defendant Nos. 1 and 2 have accepted the relationship of the plaintiff and Defendant No.3. In addition, there was a doubt, prima facie, whether the plaintiff was aware of sale deed registered on 29.4.1985 before the alleged date of cause of action i.e. 14.3.2001. The application was rejected on these reasons.

3. That, no interference is called for in the order impugned at this belated stage inasmuch as that it was passed on 14.10.2003 and the present Civil Revision Application has been moved on 26.2.2004 and

it has come up for admission in Sept.2005. The prima facie view taken by the trial court cannot be held to be patently erroneous so as to invoke the revisional powers of this court. At that same time, it is necessary to frame and decide the issue of limitation in this case, if the same issue has not been framed.

4. Hence, civil revision application is hereby rejected summarily and it is directed that the issue of limitation, if not so framed, till now, shall be framed and decide the same after parties adduced evidence alongwith other issues. The trial of the suit is hereby expedited.

5. In view of the above order, Civil Application No.23 of 2004 does not survive and the same is accordingly disposed of.

(B.H.MARLAPALLE,J.)